



Leicester Police Department
90 South Main Street
Leicester, MA 01524



May 3, 2013

MuckRock News
Mr. George LeVines
DEPT MR 2174
PO Box 55819
Boston, MA 02205-5819

RE: Public Records Request E-mailed to the LPD on 04/30/13

Dear MuckRock News,

I have received and reviewed your public records request, which was submitted to the Leicester Police Department via e-mail on 04/30/13. It appears that you are looking for "Any lists, databases, and inventory rosters containing equipment used in the field of duty (i.e., firearms, protective gear, surveillance equipment, tactical and defense equipment, vehicles, etc)."

Interpretation of Request

Massachusetts Law requires that "A records custodian is required to use his or her superior knowledge of his or her records to determine the precise record or records that is responsive to the request. However, a requester must provide a reasonable description of the requested records." ¹ The Leicester Police Department is requesting that you clarify the following so that we will be able to accurately process your request.

1. Equipment – The term "equipment" covers a wide prospect of items, including, but not limited to, police vehicles, batons, flashlights, handcuffs, oxygen tanks, defibrators, flares, lock out tools, rubber gloves, highway cones, and a whole lot more. The compiling of a list of "equipment used in the field" will take an enormous amount of time.
2. Any Lists – The department may maintain various lists of items that are owned and maintained by the town, which may include some of the items you have requested. These lists may contain other items owned by the town which are not the subject of your request. This will require that these items be redacted from the list which will be labor intensive. The lists may even include items owned by other town departments which will also have to be redacted from the list.

¹ A Guide to the Massachusetts Public Records Law (pg. 5)

Records Fee²

Unless specifically addressed by statute, a custodian may charge twenty cents (\$0.20) per page for photocopies, twenty-five cents (\$0.25) per page for microfilm copies and fifty cents (\$0.50) per page for computer printouts. Examples of statutes establishing special fees for specific public records include: G. L. c. 66, § 10(a) (copies of police records) and G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

As part of your request you have requested the following: “I also request that, if appropriate, fees be waived as we believe this request is in the public interest, as suggested but not stipulated by the recommendations of the Massachusetts Supervisor of Public Records.” The Leicester Police Department does not waive the fees associated with public records requests as to do so for some requests and not for others would be an arbitrary and capricious application of a policy and thus patently unfair.

Additionally, I have noted on your website that MuckRock.com states in part that “MuckRock is an open government tool powered by state and federal Freedom of Information Laws, a generous grant from the Sunlight Foundation and you:” and that MuckRock.com also has a drop down to “Buy Requests” and accepts credit cards for purchases or other transactions.

In light of the difficult economic times facing many municipalities, such as the Town of Leicester, it would be fiscally irresponsible to provide the documents you have requested free of charge, so I am therefore denying your request for a waiver of the fees associated with your request.

Good Faith Estimate

It is further estimated that the cost to compile the data which you have requested will exceed \$10.00. As required under the Massachusetts Public Records Law, I will provide you with a good faith estimate of the cost associated with your request; however, depending on the clarifications I have explained, this estimate could vary substantially. I will therefore provide you with a good faith estimate once I have received your clarifications or correspondence indicating you do not wish to clarify the information sought any further.

Format of Records Released

Your request also states the following: “I expect the request to be filled in an accessible format, including for screen readers, which provide text-to-speech for persons unable to read print. Files that are not accessible to screen readers include, for example, .pdf image files as well as physical documents.”

While you may “expect” to receive documents in the aforementioned formats, the Massachusetts Public Records Law only requires that the LPD provide you with the documents and does not require that they be in the format the requester expects. The type of request, which you have submitted, will likely require redaction as permitted under the Massachusetts Public Records Law and thus these requests are provide in printed format.

² See e.g., G.L. c. 66, section 10(a) (fees for police records); see also 950 CMR 32.06

Notice To Attorneys

If you are an attorney, the LPD further asserts that the court has issued specific guidelines regarding the use of the public records law to make “an end run” around the appropriate discovery process and Massachusetts Rules of Criminal Procedure. The Massachusetts Rules of Criminal Procedure were enacted as a result of an Acts and Resolve, which sets forth the necessary implication for the appropriate acquisition of the requested records, which is the discovery process.

Additionally, in my opinion, the Act and Resolve statutorily exempts them from being released in any other manner under these circumstances.³

Assertion of Exemptions

You should also be aware that a preliminary review of the information, which you have requested, indicates that the information in whole or in part may be covered by several of the exemptions included in the Massachusetts Public Records Law. The information contained in this letter should not be construed as a waiver or or assertion that the Leicester Police Department’s right and/or legal obligation to redact any of the requested information in compliance with the legal standards set forth in the Massachusetts Public Records Law. The specific exemptions which the Leicester Police Department will be asserting include, but are not limited to, the following:

1. Exemption (a) – The Statutory Exemption⁴ - Any records specifically exempted by statute.
2. Exemption (f) - The Investigatory Exemption⁵ - Which states in part that “Records custodians may withhold confidential investigative techniques indefinitely since their disclosure would prejudice future law enforcement efforts.”⁶
3. Exemption (n) – Which states in part “any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.”⁷

The Leicester Police Department further reserves the right to assert any additional exemption based upon the clarification and/or processing of your request.

³ The public records law cannot be used to circumvent this rule because “discovery should follow normal procedures in criminal cases where its availability lies in the discretion of the trial judge under standards developed” by the Supreme Judicial Court. Bougas v. Chief of Police of Lexington, 371 Mass. 59, 64 (1976). See G.L. c. 4, § 7(26)(a); G.L. c. 213, § 3.

⁴ G. L. c. 4, § 7(26)(a).

⁵ G. L. c. 4, § 7(26)(f).

⁶ Bougas v. Chief of Police of Lexington, 371 Mass. 59, 62 (1976); see also United States Department of Justice v. Landano, 113 S. Ct. 2014, 2020 (1993) (discussion of confidential sources of information under the federal Freedom of Information Act.).

⁷ G. L. c. 4, § 7 (26)(n).

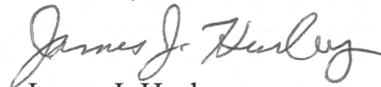
Right of Appeal

While the Leicester Police Department has not denied your request for public records, should you disagree with the information contained herein, you may exercise your statutory right of appeal as follows:

“A requester who is denied access to any requested information may petition the Supervisor of Records (Supervisor) for a review of the request. The Supervisor will then instruct a staff member, usually a staff attorney or a legal intern, to contact the records custodian and requester to ascertain the relevant facts and discuss the applicable law. The findings of the attorney or intern are then reported to the Supervisor to assist in making a decision. The records custodian will receive an administrative order if the Supervisor determines that records are being improperly withheld or the proposed fee is excessive. If the records custodian does not comply with an order issued by the Supervisor, the case may be referred to the Office of the Attorney General or appropriate district attorney for enforcement.”⁸

The Leicester Police Department will be awaiting your clarifications so that it can provide you with a good faith estimate associated with your request.

Sincerely,



James J. Hurley
Chief of Police

cc: public records file

Sent via certified mail # 7009 0820 0001 9394 5887

[Public Records Request Muck Rock News Inventory List]

⁸ 950 CMR 32.05(3)